Supreme Court, U.S.
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No. 96-1681

In The

Supreme Court of the United States

October Term, 1996

ALLEN MORGAN, SUPERINTENDENT,
KNOX COUNTY SCHOOLS,

Petitioner,

v.

CHRIS L., A MINOR BY NEXT FRIEND, MIKE L.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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May 6, 1997

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QUESTION PRESENTED

Whether courts possess the remedial authority under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415, and Tennessee law to grant appropriate relief directing a school system to seek dismissal of a Juvenile Court petition it unilaterally filed against a student with a behavioral disability for conduct that the school determined was a manifestation of his disability without first complying with the procedural safeguards in Tennessee and federal special education laws.

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STATUTORY PROVISIONS INVOLVED

Section 615(b)(1)(C) & (E) of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(b)(1)(C) & (E), provides in pertinent part:

> (1) The procedures required by this section shall include, but shall not be limited to
>
> > (C) Written prior notice to the parents or guardian of the child whenever such agency or unit
> >
> > > (i) proposes to initiate or change . . . the identification, evaluation, or educational placement of the child or the provision of a free and appropriate public education to the child;
> >
> > (E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate education to such child.

Section 615(e)(2) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(e)(2) provides in pertinent part:

> In any action brought under this paragraph the court . . . shall grant such relief as the court determines is appropriate.

Tennessee Code Annotated § 37-1-128(c)(2) [Juvenile Courts and Proceedings] provides in pertinent part:

> If a child is suspected of being in need of or is eligible for special education services, then state and federal laws governing evaluation and placement must be followed.

STATEMENT OF THE CASE

This IDEA case arose when the Knox County, Tennessee, school system unilaterally filed a petition in Juvenile Court seeking to prosecute a 14-year-old student with a behavioral disability for allegedly kicking a pipe in a school bathroom and causing water damage. The Juvenile Court petition was the culmination of years of neglect by the school system in providing proper special education and related services to Chris L. To redress the school system's violations of both the IDEA and state law, a state Administrative Law Judge ("ALJ") ruled "that the school system take all actions necessary to seek dismissal of the juvenile court petition filed against this student." Petitioner's Appendix ("Pet. App.") 43a. The decision of the ALJ was affirmed on appeal by both the United States District Court for the Eastern District of Tennessee and the United States Court of Appeals for the Sixth Circuit.

The decisions of the Courts below adequately explicate the factual background of this case. Because the Petitioner's recitation of the facts and the legal issues conflicts with the actual findings of fact in this case, several aspects must be highlighted:

1. Relying on the testimony of witnesses at the state administrative due process hearing and the overall record presented by the parties, the three Courts below found that the Knox County school system violated the requirements of the IDEA by failing timely to identify and serve Chris L. as a student eligible for special education and related services. Pet. App. 12a, 14a-15a, 38a-40a, 41a. Having neglected Chris's evident educational and behavioral needs, the efforts of his parents to secure assistance, and its statutory obligation to provide special education

and related services, the school system was properly held accountable by the Order of the ALJ. This Order in no way intrudes upon the jurisdiction of the Juvenile Court. Pet. App. 37a.

2. By unilaterally filing a Juvenile Court petition, the school system circumvented the important procedural protections embodied in the IDEA, 20 U.S.C. § 1415(b). These protections were designed to ensure that, with the full participation of a student's parents and knowledgable experts, a school system will consider all relevant information about an educationally disabled student before taking action that could fundamentally affect the student's educational placement and program. As found by the ALJ, the filing of the Juvenile Court petition was "the initiation of a change in placement and/or a disciplinary action." Pet. App. 42a. This finding of fact was adopted by both the District Court and the Court of Appeals.

3. Following discussion with Chris's father in the days immediately following the alleged incident, the principal of Chris's school requested from higher school authorities that the Juvenile Court petition filed by the school system be withdrawn. He was told that he had no control over the petition. Pet. App. 42a.

4. Chris's alleged behavior, kicking a pipe in the school bathroom, was found to be a manifestation of his behavioral disability both by school officials and by Chris's treating psychologist. Pet. App. 33a, 41a.

5. Once school officials certified Chris as eligible for special education and related services under the IDEA, an

educational and behavioral program was designed to accommodate Chris's disability. Pet. App. 41a .

REASONS FOR DENYING THE WRIT

I. THIS CASE IS NOW MOOT.

Following the decision of the Court of Appeals on January 21, 1997, the Petitioner filed an untimely Petition for Rehearing and Rehearing *En Banc*, which the Court directed not be filed. On February 24, 1997, the mandate from the Sixth Circuit issued. The school system made no attempt to stay the mandate.

Following the issuance of the mandate, counsel for the Respondent wrote to Atlanta counsel for the Petitioner requesting that the school system comply with the Order of the Court. By letter of March 25, 1997, a Knox County Deputy Law Director stated that the Juvenile Court petition had been dismissed and Chris's Juvenile Court record destroyed. Respondent's Appendix ("Res. App.") A. The letter also included a memorandum from the Chief Probation Officer of the Knox County Juvenile Court confirming the dismissal. Res. App. B.

The school system filed its petition against Chris when he was a 14-year-old eighth grade middle school student. Chris is now 18 years old. Under Tennessee law, he is no longer a child subject to the jurisdiction of the Juvenile Court. Tenn. Code Ann. § 37-1-102(4)(A). The immutable fact is that the school system can no longer file a Juvenile Court petition against Chris.

As stated in his Affidavit, Res. App. C, Chris withdrew from the Knox County school system following the first semester of his senior year in high school. He is now employed, and he does not plan to return to school. He hopes to receive his GED in the near future.

In *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1990), this Court ruled that for a case to be justiciable the dispute must remain alive throughout all stages of the litigation:

> Article III denies federal courts the power "to decide questions that cannot affect the rights of litigants in the case before them," North Carolina v. Rice, 404 U.S. 244, 246 (1971), and confines them to resolving " 'real and substantial controvers[ies] admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.' " Ibid. (quoting Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 241 (1937)). This case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate. To sustain our jurisdiction in the present case, it is not enough that a dispute was very much alive when suit was filed, or when review was obtained in the Court of Appeals. Deakins, supra, 484 U.S. at 199; Steffel v. Thompson, 415 U.S. 452, 459 n.10 (1974). The parties must continue to have a " 'personal stake in the outcome' " of the lawsuit, Los Angeles v. Lyons, 461 U.S. 95, 1091 (1983) (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)).

The Respondent no longer has this personal stake. His request for an IDEA due process hearing neither

sought damages nor class action certification, factors that this Court has identified as keeping a case alive. *Preiser v. Newkirk*, 422 U.S. 395, 402 (1975). In the present case, even if this Court were to grant certiorari and reverse the decision of the Court below, its judgment would have no operative effect on an ongoing controversy.[1] Chris has now received all the relief that he sought, and his Juvenile Court record has been destroyed. The school system can no longer pursue its petition. Essentially, the Petitioner is now seeking an advisory opinion from this Court.

This case also does not fit into the "capable of repetition, yet evading review" exception to the mootness doctrine. *First*, this case has not evaded review. The school system has received three plenary decisions analyzing the issues of this case. Had the Petitioner wanted to preserve review in this Court, he should have requested a stay of the mandate from the Sixth Circuit or here. He did neither, and the ordered relief has been executed.

Second, there is no "reasonable expectation" or "sufficient likelihood" that Chris will again be subject to the filing of a Juvenile Court petition by the Knox County Schools. *See Honig v. Doe*, 484 U.S. 305, 317-23 (1988). Chris is now beyond the jurisdiction of the Juvenile Court and no longer enrolled in school. For Chris, this case is irrevocably over.

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[1] The pendency of Respondent's petition for statutory attorney's fees and costs does not "create an Article III case or controversy where none exists on the merits of the underlying claim." *Lewis v. Continental Bank Corp.*, 494 U.S. at 480 (1990).

II. BECAUSE THE DECISIONS BELOW ARE GROUNDED IN TENNESSEE LAW, THE CONSTITUTIONAL ARGUMENTS OF THE PETITIONER ARE MISPLACED.

The Petitioner chides the Sixth Circuit for its "failure even to notice the affront to federalism," Cert. Pet. 11, caused by its decision and argues that the "logic of the Sixth Circuit is fundamentally at odds with the approach recently followed by the Fourth Circuit in *Virginia Department of Education v. Riley*, 106 F.3d 559 (4th Cir. 1997). . . . " Cert. Pet. 9-10. Aside from dispositive factual differences between the two cases (in *Riley*, for example, Virginia sought cessation of IDEA services for students whose behaviors were not manifestations of their disabilities), the Sixth Circuit rejected the school system's constitutional arguments, raised for the first time in that Court, for a very compelling reason: the result in this case is grounded in Tennessee law and policy, not exclusively in the federal IDEA.

All three decisions below rely on *In re Tony McCann*, C.A. No. 158, Roane Law, 1990 WL 16883, 17 Education for Handicapped Law Rptr. 551 (Tenn. Ct. App. 1990), *app. denied*, July 30, 1990 (the Tennessee Court of Appeals decision was authored by Riley Anderson, now Chief Justice of the Tennessee Supreme Court). In *McCann*, the Roane County, Tennessee, school system filed a Juvenile Court petition against Tony McCann, a mentally and emotionally disabled student, without first complying with the procedural requirements of the IDEA. The Juvenile Court petition alleged that Tony was physically abusive, threatened teachers, and was involved in fighting

and other disruptive behavior. Finding that the procedures required by special education law had not been followed, the Court ruled:

> All of the foregoing clearly demonstrates the Roane County School System violated both the [IDEA] and Tennessee regulations in their response to Tony McCann's disciplinary problems. The school system must follow mandated administrative procedures before turning the handicapped student over to the Juvenile Court system.

1990 WL 16883, p. 4. *McCann* is a state case interpreting state statutes, in particular Tenn. Code Ann. § 37-1-128(c)(1) & (2). By relying on this decision, all three Courts below honored, not "arrogated," state power.

In addition, unlike the decision in the *Virginia Department of Education v. Riley, supra,* which was a state challenge to a funding cut-off by the U.S. Department of Education, this case was initially heard by a Tennessee ALJ, whose expertise in special education and juvenile law and policy should be given great weight. If the constitutional arguments of the Petitioner are accepted, they would also nullify the policy of the Tennessee Department of Education, which has determined that school systems must promulgate procedures to ensure that all special education administrative procedures are exhausted before a school system can file a Juvenile Court petition against a student with disabilities for conduct that is a manifestation of the student's disability. Res. App. D.

III. THE DECISIONS BELOW, STRESSING AS THEY DO THE IMPORTANCE OF THE PROCEDURAL PROTECTIONS OF THE IDEA, ARE CONSISTENT WITH DECISIONS OF THIS COURT.

Throughout this litigation, the Petitioner has cited no case even closely analogous to support his position. The argument that the school system can circumvent the procedural safeguards of the IDEA and unilaterally prosecute a student with disabilities for conduct related to his disability is at odds with the decisions of this Court in *Hendrick Hudson District School Board of Education v. Rowley*, 458 U.S. 176 (1982) and *Honig v. Doe*, 484 U.S. 305 (1988). In *Rowley*, this Court stressed the importance of ensuring that school systems strictly comply with the procedural safeguards of the IDEA:

> When the elaborate and highly specific procedural safeguards embodied in § 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act, we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation in every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard.

Id. at 206. In *Honig v. Doe*, a public school system argued that the IDEA included an exception to its procedural safeguards for educationally disabled students deemed

dangerous or disruptive. This Court rejected that argument, stating:

> We think it clear, however, that Congress very much meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school. In doing so, Congress did not leave school administrators powerless to deal with dangerous students; it did, however, deny school officials their former right to "self-help," and directed that in the future the removal of disabled students could be accomplished only with the permission of the parents or, as a last resort, [a court of competent jurisdiction].[2]

Id. at 323-24 (emphasis in original).

The Petitioner's claim that the decision below conflicts with *Honig* is specious. The Order of the ALJ is directed only to the school system, not the Juvenile Court. Pet. App. 19a-20a, 37a-38a. Also, *Tenn. Code Ann.* § 49-6-4301(a), the provision relied on by the Petitioner to support its argument that the principal had a mandatory obligation to "report" Chris's conduct, is not applicable to this case. Chris's alleged conduct, kicking and breaking a bathroom pipe, did not constitute "vandalism endangering life, health, and safety." Pet. App. 21. Under the statute, if the principal believes that its terms are met, he is to report to the municipal or metropolitan police

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[2] In Tennessee, a Juvenile Court is not a state court of competent jurisdiction as contemplated by 20 U.S.C. § 1415(e)(2).

department or sheriff's department. In this case, the principal sought to drop the charges. Pet. App. 33a. The section does not mandate that the school system file a Juvenile Court petition. There is, therefore, no conflict with *Honig*.

IV. THE DECISIONS BELOW REST ON THREE INDEPENDENT IDEA GROUNDS.

The IDEA is not simply a funding statute premised on the Spending Clause. It rests on Congress' power to enforce section 5 of the Fourteenth Amendment. *S. Conf. Rep.* No. 455, 94th Cong., 1st Sess., 28 & 29, *reprinted in* 1975 *U.S. Code Cong. & Ad. News* 1480, 1482 ("The Senate bill . . . states that it is the national interest that the federal government assist state and local efforts *in order to assure equal protection of the law.*" (emphasis in original)); *see Rowley*, 458 U.S. at 200 (Act "provide[s] a 'basic floor or opportunity' consistent with equal protection").

There are three independent grounds rooted in the language and remedial purposes of the IDEA that support the decisions below. *First*, the ALJ made a finding of fact that the unilateral filing of a Juvenile Court petition by the school system was a proposal to initiate or change the educational placement of Chris under 20 U.S.C. § 1415(b)(C)(i). This determination comports with the weight of lower court decisions interpreting this fact-driven language. *See, e.g., Board of Education of Community High School District No. 218 v. Illinois State Board of Education*, 103 F.3d 545, 548-49 (7th Cir. 1996) (summary of cases on change of placement). It is cynical for the Petitioner to suggest that the potential for incarceration that

existed in this case is mitigated because there may only be a "change in the location of the site in which the appropriate individualized education program ("IEP") under the IDEA will be implemented." Cert. Pet. 4. The plain meaning of "change of placement" must certainly encompass a student who may be removed from his home school and placed in jail. *See* Pet. App. 20a.

Second, the Courts below found that the school system's filing of juvenile charges against Chris constituted disciplinary action that falls within the ambit of 20 U.S.C. § 1415(b)(1)(E). As is undisputed in the record, the filing of the Juvenile Court charges was the culmination of a lengthy series of suspensions levied against Chris because of his behavior. Against this background, the filing of a Juvenile Court petition was a form of disciplinary exclusion that triggered the procedural protections of 20 U.S.C. § 1415(b). *See Hayes v. Unified School District No. 377,* 877 F.2d 809 (10th Cir. 1989).

Finally, the Courts below determined that the school system had violated the IDEA by failing to identify and provide special education services to Chris either before or during his academic and behavioral decline during the 1992-93 school year. Pet. App. 12a. These violations justified the relief awarded by the Courts below under the broad discretion conferred on courts to fashion "appropriate" relief. 20 U.S.C. § 1415(e)(2). In *Burlington School Committee v. Massachusetts Department of Education,* 471 U.S. 359, 369 (1985), this Court underscored the latitude of the remedial authority accorded to courts in IDEA litigation:

> The statute directs the court to "grant such relief as [it] determines is appropriate." The ordinary meaning of these words confers broad discretion on the court. The type of relief is not further specified, except that it must be "appropriate." Absent other reference, the only possible interpretation is that the relief is to be "appropriate" in light of the purpose of the Act.

The purpose of IDEA is to assure that children with disabilities are not deprived of a free and appropriate public education because of behavioral problems associated with their disabilities. In this case, the ALJ's remedial order is carefully tailored to further this purpose.

V. THIS CASE IS FACT-DRIVEN.

As found by all three Courts, the exaggerated claims of the Petitioner find no support in the record of this case. *First*, Chris's alleged conduct, which stemmed from his behavioral disability, does not make him a delinquent perpetrator of violence, as the Petitioner seeks to portray. Indeed, the Juvenile Court petition filed against him was characterized by the District Court as an "unruly," not a "delinquent" petition, Pet. App. 19a, denoting less serious behavior.

Second, even if Chris's conduct did rise to the level of immediately endangering himself or others, the school system has remedies under the IDEA and state law available to exclude disabled students who engage in such conduct. *See Honig v. Doe*, 484 U.S. at 325-26 (school systems can seek an injunction excluding a student from school following a 10-day suspension). The decisions below also do not prohibit school systems from calling

the police or mental health crisis teams when emergency circumstances justify such action. The Petitioner's version of this case was properly portrayed by the District Court as "a parade of horrors." Pet. App. 21a.

Finally, the decisions below do not "divest" a Juvenile Court of jurisdiction. They do compel a school system to comply with the procedural safeguards of the IDEA and state law before filing a Juvenile Court petition against a disabled student. This "exhaustion" concept, which underpins the decisions below, is consistent with the expansive remedial purposes that animate the IDEA.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

[SEAL]

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March 25, 1997

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Brenda McGee
1534 Cumberland Avenue
Knoxville, TN 37996-4070

RE: *Allen Morgan, Superintendent, Knox County Schools v. Chris L., a minor, b/n/f Mike L.,*
U.S.D.C. Docket No. 3:93-cv-0524

Dear Dean and Brenda:

Enclosed you will find a copy of a Memorandum from Larry Gibney, Chief Probation Officer, to Steve Griffin, Chief of Security, as further evidence of dismissal of the Petition against Chris L. and destruction of court records.

If you have any questions, please contact me at your earliest convenience.

With best regards,

/s/ Catherine F. Quist/KFC
CATHERINE F. QUIST
Deputy Law Director

CFQ:kfc

APPENDIX B

KNOX COUNTY JUVENILE COURT MEMORANDUM

March 12, 1997

To: Steve Griffin
Chief of Security
Knox County Schools

From: Larry Gibney
Chief Probation Officer

Re: Chris [L.]

I have at hand your memorandum of March 11 requesting withdrawal of the vandalism petition, filed by your department, on the above named youth. That action has, in effect, already been done.

The petition in question was filed May 12, 1993 and was set for hearing on July 8, 1993. On that date the matter was passed to be reset because other litigation was pending on this matter in other courts. As that other litigation remained active elsewhere the petition was never reset in this court. When the youth turned 18 on January 3, 1997 our case was closed. At that time, in keeping with our policy, since no formal disposition had ever been entered regarding this youth, the record was destroyed and his name has been removed from the records of this court.

APPENDIX C

In The
Supreme Court of the United States

October Term, 1996

No. 96-1681

Allen Morgan,
Superintendent, Knox County Schools,
Petitioner,

v.

Chris L., A Minor by Next Friend, Mike L.,
Respondent.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

AFFIDAVIT

I, Chris L., having been duly sworn, state as follows:

1. I am the Respondent in this case.

2. I turned 18 years old on January 3, 1997.

3. I withdrew from the Knox County Schools in January, 1997, after the first semester of my senior year in high school.

4. I am now employed.

5. In the future, I plan to obtain a GED. I have no intention of returning to the Knox County Schools.

6. Further affiant sayeth not.

This the 1st day of May, 1997.

/s/ Chris L.
Chris L.

Sworn to and subscribed before me this the 1st day of May, 1997.

/s/ Doris J. Gentry
Notary Public

My Commission expires 9-29-99.

APPENDIX D

[SEAL]

TENNESSEE
STATE DEPARTMENT OF EDUCATION
OFFICE OF COMMISSIONER
NASHVILLE, TENNESSEE 37843-3275

May 21, 1993

Amon Lay, Superintendent
Scott County School System
P.O. Box 37, 208 Court St.
Huntsville, TN 37756

Dear Superintendent Lay:

This office has received notification from Lenny Croce that the complaint filed on behalf of [name omitted] is not resolved. The action needed to bring closure to this complaint is to provide notification of your specific procedure to exhaust all administrative remedies before filing petitions in Juvenile Court on children with disabilities. See In re: McCann, C.A. No. 58, slip pp. 5-9 (Tenn. Ct. App., Feb. 27, 1990).

Your specific procedure may include maintaining a list of special education students for each school level staff and central office staff who may refer a student of Juvenile Court. These staff members could then refer the student back to the M-Team to recommend alternative discipline or behavior management strategies to insure administrative remedies are tried to offset the necessity to refer the student to Juvenile Court.

Please submit your plan for insuring students' procedural safeguards with regard to discipline no later than June 14, 1993.

We appreciate your recommendation for an inservice program for principals and administrators to be conducted in the Fall of 1993 to address discipline of disabled students. If we can be of assistance, please feel free to contact us.

Sincerely,

/s/ Joseph Fisher
Joseph E. Fisher
Assistant Commissioner

JEF:RS:ct

cc: Regan Stein
Mike Burchfield

Lenny Croce